

The Honorable David G. Estudillo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff,

v.

ALLEVIATE TAX LLC, and JOHN
DOE 1-10,

Defendants.

Case No. 3:23-cv-06071

**DEFENDANT ALLEVIATE TAX
LLC'S AMENDED ANSWER TO
PLAINTIFF NATHEN BARTON'S
FIRST AMENDED COMPLAINT
AND COUNTERCLAIM TO
PLAINTIFF NATHEN BARTON'S
FIRST AMENDED COMPLAINT**

Defendant Alleviate Tax LLC ("Alleviate"), by and through its undersigned counsel, files its Amended Answer, Affirmative Defenses, and Counterclaim to Plaintiff Nathan Barton's ("Plaintiff") First Amended Complaint ("FAC") [Dkt. No. 5] as follows:

I. INTRODUCTION

1. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 1 and therefore denies the same.

2. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 2 and therefore denies the same.

3. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 3 and therefore denies the same.

1 4. Alleviate is without sufficient knowledge or information to form a belief
2 as to the truth of the allegations of Paragraph 4 and therefore denies the same.

3 5. Alleviate is without sufficient knowledge or information to form a belief
4 as to the truth of the allegations of Paragraph 5 and therefore denies the same.

5 6. Alleviate is without sufficient knowledge or information to form a belief
6 as to the truth of the allegations of Paragraph 6 and therefore denies the same.

7 7. Paragraph 7 alleges legal conclusions to which no response is required.
8 To the extent a response is deemed necessary, Alleviate states that 47 C.F.R. §
9 64.1200(f) is a federal statute that speak for itself, and otherwise denies the
10 allegations in Paragraph 7.

11 8. Alleviate is without sufficient knowledge or information to form a belief
12 as to the truth of the allegations of Paragraph 8 and therefore denies the same.

13 9. Paragraph 9 alleges legal conclusions to which no response is required.
14 To the extent a response is deemed necessary, Alleviate denies the allegations of
15 Paragraph 9.

16 10. Paragraph 10 alleges legal conclusions to which no response is required.
17 To the extent a response is deemed necessary, Alleviate denies the allegations of
18 Paragraph 10.

19 11. Alleviate denies the allegations of Paragraph 11.

20 12. Alleviate denies the allegations of Paragraph 12.

21 13. Alleviate is without sufficient knowledge or information to form a belief
22 as to the truth of the allegations of Paragraph 13 and therefore denies the same.

23 14. Alleviate is without sufficient knowledge or information to form a belief
24 as to the truth of the allegations of Paragraph 14 and therefore denies the same.

25 15. Alleviate is without sufficient knowledge or information to form a belief
26 as to the truth of the allegations of Paragraph 15 pertaining to Barton's phone number
27 and therefore denies the same.
28

1 16. Alleviate denies the allegations of Paragraph 16.

2 17. Alleviate denies the allegations of Paragraph 17.

3 18. Alleviate is without sufficient knowledge or information to form a belief
4 as to the truth of the allegations of Paragraph 18 pertaining to Barton's phone number
5 and therefore denies the same.

6 19. Alleviate denies the allegations of Paragraph 19.

7 20. Alleviate is without sufficient knowledge or information to form a belief
8 as to the truth of the allegations of Paragraph 20 pertaining to Barton's phone number
9 and therefore denies the same.

10 21. Paragraph 21 alleges legal conclusions to which no response is required.
11 To the extent a response is deemed necessary, Alleviate denies the allegations of
12 Paragraph 21.

13 22. To the extent the allegations in paragraph 22 merely purport to describe
14 statements on salary.com's website, Alleviate states that the statements on the
15 website are the best source of their full content and context and, to the extent such
16 allegations do not accurately represent their full content and context, Alleviate denies
17 the allegations in paragraph 22.

18 23. To the extent the allegations in paragraph 23 merely purport to describe
19 statements on salary.com's website, Alleviate states that the statements on the
20 website are the best source of their full content and context and, to the extent such
21 allegations do not accurately represent their full content and context, Alleviate denies
22 the allegations in paragraph 23.

23 II. BASIS FOR JURISDICTION

24 24. Alleviate is without sufficient knowledge or information to form a belief
25 as to the truth of the allegations of Paragraph 24 regarding Plaintiff Nathen Barton's
26 residence and therefore denies the same.

1 25. Paragraph 25 alleges legal conclusions to which no response is required.
2 To the extent a response is deemed necessary, Alleviate denies the allegations of
3 Paragraph 25.

4 26. Alleviate denies the allegations of Paragraph 26.

5 27. Paragraph 27 alleges legal conclusions to which no response is required.
6 To the extent a response is deemed necessary, Alleviate denies the allegations of
7 Paragraph 27.

8 28. Alleviate is without sufficient knowledge or information to form a belief
9 as to the truth of the allegations of Paragraph 28 and therefore denies the same.

10 29. Paragraph 29 alleges legal conclusions to which no response is required.
11 To the extent a response is deemed necessary, Alleviate denies the allegations of
12 Paragraph 29.

13 30. Paragraph 30 alleges legal conclusions to which no response is required.
14 To the extent a response is deemed necessary, Alleviate denies the allegations of
15 Paragraph 30.

16 31. Paragraph 31 alleges legal conclusions to which no response is required.
17 To the extent a response is deemed necessary, Alleviate denies the allegations of
18 Paragraph 31.

19 32. Paragraph 32 alleges legal conclusions to which no response is required.
20 To the extent a response is deemed necessary, Alleviate denies the allegations of
21 Paragraph 32.

22 33. Paragraph 33 alleges legal conclusions to which no response is required.
23 To the extent a response is deemed necessary, Alleviate denies the allegations of
24 Paragraph 33.

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THE PARTIES TO THE LITIGATION

34. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 34 regarding Plaintiff Nathen Barton's residence and therefore denies the same.

35. Alleviate admits that it is a California registered company with its principal places of business at 2108 N St Ste N, Sacramento CA 95816 and otherwise denies the allegations of Paragraph 35.

36. Paragraph 36 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 36.

37. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 37 and therefore denies the same.

38. Alleviate denies the allegations in Paragraph 38.

III. STATEMENT OF CLAIM

39. Paragraph 39 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 39.

40. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 40 and therefore denies the same.

41. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 41 and therefore denies the same.

42. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 42 and therefore denies the same.

43. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 43 regarding Plaintiff's phone plans and therefore denies the same.

55. Alleviate denies the allegations of Paragraph 55.

56. Alleviate denies the allegations of Paragraph 56.

57. Alleviate denies the allegations of Paragraph 57.

58. Alleviate denies the allegations of Paragraph 58.

59. Alleviate denies the allegations of Paragraph 59.

60. Alleviate denies the allegations of Paragraph 60.

61. Alleviate denies the allegations of Paragraph 61.

62. Paragraph 62 alleges legal conclusions to which no response is required.

To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 62.

63. Alleviate denies the allegations of Paragraph 63.

64. Alleviate denies the allegations of Paragraph 64.

Calls using Calling Script A

65. Alleviate denies the allegations of Paragraph 65.

66. Alleviate denies the allegations of Paragraph 66.

67. Paragraph 67 alleges legal conclusions to which no response is required.

To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 67.

68. Alleviate denies the allegations of Paragraph 68.

69. Alleviate denies the allegations of Paragraph 69.

70. Alleviate denies the allegations of Paragraph 70.

71. Alleviate denies the allegations of Paragraph 71.

72. Alleviate denies the allegations of Paragraph 72.

73. Alleviate denies the allegations of Paragraph 73.

74. Alleviate denies the allegations of Paragraph 74.

75. Paragraph 75 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 75.

76. Alleviate denies the allegations of Paragraph 76.

77. Paragraph 77 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 77.

78. Alleviate denies the allegations of Paragraph 78.

79. Alleviate denies the allegations of Paragraph 79.

80. Alleviate denies the allegations of Paragraph 80.

81. Alleviate denies the allegations of Paragraph 81.

82. Paragraph 82 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 82.

83. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 83 and therefore denies the same.

84. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 84 and therefore denies the same.

85. Alleviate denies the allegations of Paragraph 85.

Alleviate is responsible for the Calling Script A calls

86. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 86 and therefore denies the same.

87. Alleviate denies the allegations of Paragraph 87.

88. Alleviate denies the allegations of Paragraph 88.

89. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 89 and therefore denies the same.

1 90. Alleviate is without sufficient knowledge or information to form a belief
2 as to the truth of the allegations of Paragraph 90 and therefore denies the same.

3 91. Alleviate is without sufficient knowledge or information to form a belief
4 as to the truth of the allegations of Paragraph 91 and therefore denies the same.

5 92. Alleviate denies the allegations of Paragraph 92.

6 93. Alleviate denies the allegations of Paragraph 93.

7 94. Alleviate admits the allegations of Paragraph 94.

8 95. Paragraph 95 alleges legal conclusions to which no response is required.
9 To the extent a response is deemed necessary, Alleviate denies the allegations of
10 Paragraph 95.

11 96. Alleviate denies the allegations of Paragraph 96.

12 97. Alleviate denies the allegations of Paragraph 97.

13 98. Paragraph 98 alleges legal conclusions to which no response is required.
14 To the extent a response is deemed necessary, Alleviate denies the allegations of
15 Paragraph 98.

16 99. Paragraph 99 alleges legal conclusions to which no response is required.
17 To the extent a response is deemed necessary, Alleviate denies the allegations of
18 Paragraph 99.

19 100. Paragraph 100 alleges legal conclusions to which no response is
20 required. To the extent a response is deemed necessary, Alleviate denies the
21 allegations of Paragraph 100.

22 101. Alleviate denies the allegations of Paragraph 101.

23 102. Alleviate denies the allegations of Paragraph 102.

24 103. Alleviate denies the allegations of Paragraph 103.

25 104. Alleviate denies the allegations of Paragraph 104.

26 105. Alleviate denies the allegations of Paragraph 105.

27 106. Alleviate denies the allegations of Paragraph 106.

107. Alleviate denies the allegations of Paragraph 107.

108. Alleviate denies the allegations of Paragraph 108.

109. Alleviate denies the allegations of Paragraph 109.

110. Alleviate denies the allegations of Paragraph 110.

111. Alleviate denies the allegations of Paragraph 111.

112. Alleviate denies the allegations of Paragraph 112.

113. Alleviate denies the allegations of Paragraph 113.

114. Alleviate denies the allegations of Paragraph 114.

115. Alleviate denies the allegations of Paragraph 115.

116. Alleviate denies the allegations of Paragraph 116.

117. Alleviate admits the allegations of Paragraph 117.

118. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 118 and therefore denies the same.

119. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph and therefore denies the same.

120. Paragraph 120 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 120.

121. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 121 and therefore denies the same.

122. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 122 and therefore denies the same.

123. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 123 and therefore denies the same.

124. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 124 and therefore denies the same.

1 125. Alleviate is without sufficient knowledge or information to form a belief
2 as to the truth of the allegations of Paragraph 125 and therefore denies the same.

3 126. Alleviate admit the allegations of Paragraph 126.

4 127. Alleviate denies the allegations of Paragraph 127.

5 128. Alleviate denies the allegations of Paragraph 128.

6 129. Alleviate denies the allegations of Paragraph 129.

7 130. Alleviate is without sufficient knowledge or information to form a belief
8 as to the truth of the allegations of Paragraph 130 and therefore denies the same.

9 131. Alleviate denies the allegations of Paragraph 131.

10 132. Alleviate denies the allegations of Paragraph 132.

11 133. Alleviate denies the allegations of Paragraph 133.

12 134. Alleviate denies the allegations of Paragraph 134.

13 135. Alleviate denies the allegations of Paragraph 135.

14 136. Alleviate denies the allegations of Paragraph 136.

15 137. Paragraph 137 alleges legal conclusions to which no response is
16 required. To the extent a response is deemed necessary, Alleviate denies the
17 allegations of Paragraph 137.

18 138. Paragraph 138 alleges legal conclusions to which no response is
19 required. To the extent a response is deemed necessary, Alleviate denies the
20 allegations of Paragraph 138.

21 139. Paragraph 139 alleges legal conclusions to which no response is
22 required. To the extent a response is deemed necessary, Alleviate denies the
23 allegations of Paragraph 139.

24 140. Alleviate denies the allegations of Paragraph 140.

25 141. Paragraph 141 alleges legal conclusions to which no response is
26 required. To the extent a response is deemed necessary, Alleviate denies the
27 allegations of Paragraph 141.

1 142. Paragraph 142 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 142.

4 143. Paragraph 143 alleges legal conclusions to which no response is
5 required. To the extent a response is deemed necessary, Alleviate denies the
6 allegations of Paragraph 143.

7 144. Alleviate denies the allegations of Paragraph 144.

8 145. Alleviate is without sufficient knowledge or information to form a belief
9 as to the truth of the allegations of Paragraph 145 and therefore denies the same.

10 146. Alleviate denies the allegations of Paragraph 146.

11 147. Alleviate denies the allegations of Paragraph 147.

12 148. Alleviate denies the allegations of Paragraph 148.

13 149. Paragraph 149 alleges legal conclusions to which no response is
14 required. To the extent a response is deemed necessary, Alleviate denies the
15 allegations of Paragraph 149.

16 150. Paragraph 150 alleges legal conclusions to which no response is
17 required. To the extent a response is deemed necessary, Alleviate denies the
18 allegations of Paragraph 150.

19 151. Paragraph 151 alleges legal conclusions to which no response is
20 required. To the extent a response is deemed necessary, Alleviate denies the
21 allegations of Paragraph 151.

22 152. Paragraph 152 alleges legal conclusions to which no response is
23 required. To the extent a response is deemed necessary, Alleviate denies the
24 allegations of Paragraph 152.

25 153. Paragraph 153 alleges legal conclusions to which no response is
26 required. To the extent a response is deemed necessary, Alleviate denies the
27 allegations of Paragraph 153.

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1 154. Paragraph 154 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 154.

4 155. Paragraph 155 alleges legal conclusions to which no response is
5 required. To the extent a response is deemed necessary, Alleviate denies the
6 allegations of Paragraph 155.

7 156. Paragraph 156 alleges legal conclusions to which no response is
8 required. To the extent a response is deemed necessary, Alleviate denies the
9 allegations of Paragraph 156.

10 157. Paragraph 157 alleges legal conclusions to which no response is
11 required. To the extent a response is deemed necessary, Alleviate denies the
12 allegations of Paragraph 157.

13 158. Alleviate is without sufficient knowledge or information to form a belief
14 as to the truth of the allegations of Paragraph 158 and therefore denies the same.

15 159. Alleviate denies the allegations of Paragraph 159.

16 160. Alleviate denies the allegations of Paragraph 160.

17 161. Paragraph 161 alleges legal conclusions to which no response is
18 required. To the extent a response is deemed necessary, Alleviate denies the
19 allegations of Paragraph 161.

20 162. Alleviate is without sufficient knowledge or information to form a belief
21 as to the truth of the allegations of Paragraph 162 and therefore denies the same.

22 163. Alleviate is without sufficient knowledge or information to form a belief
23 as to the truth of the allegations of Paragraph 163 and therefore denies the same.

24 164. Paragraph 164 alleges legal conclusions to which no response is
25 required. To the extent a response is deemed necessary, Alleviate denies the
26 allegations of Paragraph 164.

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1 165. Paragraph 165 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 165.

4 166. Alleviate denies the allegations of Paragraph 166.

5 167. Paragraph 167 alleges legal conclusions to which no response is
6 required. To the extent a response is deemed necessary, Alleviate denies the
7 allegations of Paragraph 167.

8 168. Paragraph 168 alleges legal conclusions to which no response is
9 required. To the extent a response is deemed necessary, Alleviate denies the
10 allegations of Paragraph 168.

11 169. Paragraph 169 alleges legal conclusions to which no response is
12 required. To the extent a response is deemed necessary, Alleviate denies the
13 allegations of Paragraph 169.

14 170. Paragraph 170 alleges legal conclusions to which no response is
15 required. To the extent a response is deemed necessary, Alleviate denies the
16 allegations of Paragraph 170.

17 171. Alleviate denies the allegations of Paragraph 171.

18 172. Alleviate denies the allegations of Paragraph 172.

19 173. Alleviate is without sufficient knowledge or information to form a belief
20 as to the truth of the allegations of Paragraph 173 and therefore denies the same.

21 174. Alleviate denies the allegations of Paragraph 174.

22 175. Alleviate denies the allegations of Paragraph 175.

23 176. Alleviate denies the allegations of Paragraph 176.

24 177. Paragraph 177 alleges legal conclusions to which no response is
25 required. To the extent a response is deemed necessary, Alleviate denies the
26 allegations of Paragraph 177.

1 178. Paragraph 178 alleges legal conclusions to which no response is
 2 required. To the extent a response is deemed necessary, Alleviate denies the
 3 allegations of Paragraph 178.

4 179. Paragraph 179 alleges legal conclusions to which no response is
 5 required. To the extent a response is deemed necessary, Alleviate denies the
 6 allegations of Paragraph 179.

7 180. Paragraph 180 alleges legal conclusions to which no response is
 8 required. To the extent a response is deemed necessary, Alleviate denies the
 9 allegations of Paragraph 180.

10 181. Paragraph 181 alleges legal conclusions to which no response is
 11 required. To the extent a response is deemed necessary, Alleviate denies the
 12 allegations of Paragraph 181.

13 182. Alleviate denies the allegations of Paragraph 182.

14 183. Alleviate denies the allegations of Paragraph 183.

15 184. Alleviate denies the allegations of Paragraph 184.

16 185. Alleviate denies the allegations of Paragraph 185.

17 186. Alleviate denies the allegations of Paragraph 186.

18 187. Alleviate denies the allegations of Paragraph 187.

19 188. Alleviate denies the allegations of Paragraph 188.

20 189. Alleviate denies the allegations of Paragraph 189.

21 190. Paragraph 190 alleges legal conclusions to which no response is
 22 required. To the extent a response is deemed necessary, Alleviate denies the
 23 allegations of Paragraph 190.

24 **Barton gives Alleviate DNC request #1**

25 191. Alleviate denies the allegations of Paragraph 191.

26 192. Alleviate denies the allegations of Paragraph 192.

27 193. Alleviate denies the allegations of Paragraph 193.

207. Paragraph 207 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleivate denies the allegations of Paragraph 207.

208. Alleviate denies the allegations of Paragraph 208.

209. Alleviate denies the allegations of Paragraph 209.

210. Alleviate denies the allegations of Paragraph 210.

211. Alleviate denies the allegations of Paragraph 211.

212. Alleviate denies the allegations of Paragraph 212.

213. Alleviate denies the allegations of Paragraph 213.

214. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 214 and therefore denies the same.

215. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 215 and therefore denies the same.

216. Alleviate denies the allegations of Paragraph 216.

217. Alleviate denies the allegations of Paragraph 217.

218. Alleviate denies the allegations of Paragraph 218.

219. Alleviate denies the allegations of Paragraph 219.

220. Alleviate denies the allegations of Paragraph 220.

221. Alleviate denies the allegations of Paragraph 221.

222. Alleviate denies the allegations of Paragraph 222.

223. Alleviate denies the allegations of Paragraph 223.

224. Alleviate denies the allegations of Paragraph 224.

225. Alleviate denies the allegations of Paragraph 225.

Calls using Calling Script B

226. Alleviate denies the allegations of Paragraph 226.

227. Alleviate is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 227 and therefore denies the same.

1 228. Alleviate denies the allegations of Paragraph 228.

2 229. Alleviate denies the allegations of Paragraph 229.

3 **Alleviate has solicited Barton via text messages**

4 230. Paragraph 230 alleges legal conclusions to which no response is
5 required. To the extent a response is deemed necessary, Alleviate denies the
6 allegations of Paragraph 230.

7 231. Paragraph 231 alleges legal conclusions to which no response is
8 required. To the extent a response is deemed necessary, Alleviate denies the
9 allegations of Paragraph 231.

10 232. Alleviate denies the allegations of Paragraph 232.

11 233. Alleviate denies the allegations of Paragraph 233.

12 234. Alleviate denies the allegations of Paragraph 234.

13 235. Paragraph 235 alleges legal conclusions to which no response is
14 required. To the extent a response is deemed necessary, Alleviate denies the
15 allegations of Paragraph 235.

16 236. Paragraph 236 alleges legal conclusions to which no response is
17 required. To the extent a response is deemed necessary, Alleviate denies the
18 allegations of Paragraph 236.

19 237. Alleviate admit the allegations of Paragraph 237.

20 238. Paragraph 238 alleges legal conclusions to which no response is
21 required. To the extent a response is deemed necessary, Alleviate denies the
22 allegations of Paragraph 238.

23 239. Paragraph 239 alleges legal conclusions to which no response is
24 required. To the extent a response is deemed necessary, Alleviate denies the
25 allegations of Paragraph 239.

26 240. Alleviate is without sufficient knowledge or information to form a belief
27 as to the truth of the allegations of Paragraph 240 and therefore denies the same.
28

1 241. Alleviate denies the allegations of Paragraph 241.

2 242. Paragraph 242 alleges legal conclusions to which no response is
3 required. To the extent a response is deemed necessary, Alleviate denies the
4 allegations of Paragraph 242.

5 243. Paragraph 243 alleges legal conclusions to which no response is
6 required. To the extent a response is deemed necessary, Alleviate denies the
7 allegations of Paragraph 243.

8 244. Alleviate denies the allegations of Paragraph 244.

9 245. Alleviate denies the allegations of Paragraph 245.

10 246. Alleviate denies the allegations of Paragraph 246.

11 247. Alleviate denies the allegations of Paragraph 247.

12 248. Paragraph 248 alleges legal conclusions to which no response is
13 required. To the extent a response is deemed necessary, Alleviate denies the
14 allegations of Paragraph 248.

15 249. Paragraph 249 alleges legal conclusions to which no response is
16 required. To the extent a response is deemed necessary, Alleviate denies the
17 allegations of Paragraph 249.

18 250. Alleviate admit the allegations of Paragraph 250.

19 251. Paragraph 251 alleges legal conclusions to which no response is
20 required. To the extent a response is deemed necessary, Alleviate denies the
21 allegations of Paragraph 251.

22 252. Paragraph 252 alleges legal conclusions to which no response is
23 required. To the extent a response is deemed necessary, Alleviate denies the
24 allegations of Paragraph 252.

25 253. Paragraph 253 alleges legal conclusions to which no response is
26 required. To the extent a response is deemed necessary, Alleviate denies the
27 allegations of Paragraph 253.

1 254. Paragraph 254 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 254.

4 255. Alleviate is without sufficient knowledge or information to form a belief
5 as to the truth of the allegations of Paragraph 255 and therefore denies the same.

6 256. Paragraph 256 alleges legal conclusions to which no response is
7 required. To the extent a response is deemed necessary, Alleviate denies the
8 allegations of Paragraph 256.

9 **The calls use pre-recorded or artificially generated voice**

10 257. Alleviate is without sufficient knowledge or information to form a belief
11 as to the truth of the allegations of Paragraph 257 and therefore denies the same.

12 258. Alleviate is without sufficient knowledge or information to form a belief
13 as to the truth of the allegations of Paragraph 258 and therefore denies the same.

14 259. Alleviate denies the allegations of Paragraph 259.

15 **Other phone calls**

16 260. Paragraph 260 alleges legal conclusions to which no response is
17 required. To the extent a response is deemed necessary, Alleviate denies the
18 allegations of Paragraph 260.

19 **“this isn’t a sales call”**

20 261. Paragraph 261 alleges legal conclusions to which no response is
21 required. To the extent a response is deemed necessary, Alleviate denies the
22 allegations of Paragraph 261.

23 **Alleviate is responsible for all the Calls**

24 262. Alleviate denies the allegations of Paragraph 262.

25 263. Alleviate denies the allegations of Paragraph 263.

26 264. Alleviate denies the allegations of Paragraph 264.

27 265. Alleviate denies the allegations of Paragraph 265.

1 266. Alleviate denies the allegations of Paragraph 266.

2 267. Alleviate denies the allegations of Paragraph 267.

3 268. Alleviate denies the allegations of Paragraph 268.

4 269. Alleviate denies the allegations of Paragraph 269.

5 270. Alleviate denies the allegations of Paragraph 270.

6 271. Alleviate denies the allegations of Paragraph 271.

7 272. Paragraph 272 alleges legal conclusions to which no response is
8 required. To the extent a response is deemed necessary, Alleviate denies the
9 allegations of Paragraph 272.

10 273. Alleviate denies the allegations of Paragraph 273.

11 274. Alleviate denies the allegations of Paragraph 274.

12 275. Paragraph 275 alleges legal conclusions to which no response is
13 required. To the extent a response is deemed necessary, Alleviate denies the
14 allegations of Paragraph 275.

15 276. Alleviate denies the allegations of Paragraph 276.

16 277. Alleviate denies the allegations of Paragraph 277.

17 278. Paragraph 278 alleges legal conclusions to which no response is
18 required. To the extent a response is deemed necessary, Alleviate denies the
19 allegations of Paragraph 278.

20 279. Alleviate denies the allegations of Paragraph 279.

21 280. Alleviate is without sufficient knowledge or information to form a belief
22 as to the truth of the allegations of Paragraph 280 and therefore denies the same.

23 281. Alleviate denies the allegations of Paragraph 281.

24 282. Alleviate denies the allegations of Paragraph 282.

25 283. Alleviate denies the allegations of Paragraph 283.

26 284. Alleviate is without sufficient knowledge or information to form a belief
27 as to the truth of the allegations of Paragraph 284 and therefore denies the same.
28

1 285. Alleviate is without sufficient knowledge or information to form a belief
2 as to the truth of the allegations of Paragraph 285 and therefore denies the same.

3 286. Alleviate denies the allegations of Paragraph 286.

4 287. Alleviate denies the allegations of Paragraph 287.

5 288. Alleviate denies the allegations of Paragraph 288.

6 289. Alleviate denies the allegations of Paragraph 289.

7 290. Alleviate denies the allegations of Paragraph 290.

8 291. Alleviate denies the allegations of Paragraph 291.

9 292. Alleviate denies the allegations of Paragraph 292.

10 293. Alleviate denies the allegations of Paragraph 293.

11 294. Alleviate denies the allegations of Paragraph 294.

12 295. Alleviate denies the allegations of Paragraph 295.

13 296. Alleviate denies the allegations of Paragraph 296.

14 297. Alleviate denies the allegations of Paragraph 297.

15 298. Alleviate denies the allegations of Paragraph 298.

16 299. Alleviate denies the allegations of Paragraph 299.

17 300. Paragraph 300 alleges legal conclusions to which no response is
18 required. To the extent a response is deemed necessary, Alleviate denies the
19 allegations of Paragraph 300.

20 301. Paragraph 301 alleges legal conclusions to which no response is
21 required. To the extent a response is deemed necessary, Alleviate denies the
22 allegations of Paragraph 301.

23 302. Alleviate denies the allegations of Paragraph 302.

24 303. Paragraph 303 alleges legal conclusions to which no response is
25 required. To the extent a response is deemed necessary, Alleviate denies the
26 allegations of Paragraph 303.

1 304. Paragraph 304 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 304.

4 305. Paragraph 305 alleges legal conclusions to which no response is
5 required. To the extent a response is deemed necessary, Alleviate denies the
6 allegations of Paragraph 305.

7 306. Paragraph 306 alleges legal conclusions to which no response is
8 required. To the extent a response is deemed necessary, Alleviate denies the
9 allegations of Paragraph 306.

10 307. Alleviate denies the allegations of Paragraph 307.

11 308. Alleviate denies the allegations of Paragraph 308.

12 309. Alleviate denies the allegations of Paragraph 309.

13 310. Alleviate denies the allegations of Paragraph 310.

14 **These calls are annoying**

15 311. Paragraph 311 alleges legal conclusions to which no response is
16 required. To the extent a response is deemed necessary, Alleviate denies the
17 allegations of Paragraph 311.

18 312. Paragraph 312 alleges legal conclusions to which no response is
19 required. To the extent a response is deemed necessary, Alleviate denies the
20 allegations of Paragraph 312.

21 313. Paragraph 313 alleges legal conclusions to which no response is
22 required. To the extent a response is deemed necessary, Alleviate denies the
23 allegations of Paragraph 313.

24 314. Paragraph 314 alleges legal conclusions to which no response is
25 required. To the extent a response is deemed necessary, Alleviate denies the
26 allegations of Paragraph 314.

Treble Damages

315. Paragraph 315 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 315.

316. Alleviate denies the allegations of Paragraph 316.

317. Alleviate denies the allegations of Paragraph 317.

318. Alleviate denies the allegations of Paragraph 318.

319. Alleviate denies the allegations of Paragraph 319.

320. Alleviate denies the allegations of Paragraph 320.

321. Alleviate denies the allegations of Paragraph 321.

322. Alleviate denies the allegations of Paragraph 322.

323. Alleviate denies the allegations of Paragraph 323.

324. Alleviate denies the allegations of Paragraph 324.

325. Alleviate denies the allegations of Paragraph 325.

326. Alleviate denies the allegations of Paragraph 326.

327. Alleviate denies the allegations of Paragraph 327.

328. Alleviate denies the allegations of Paragraph 328.

329. Alleviate denies the allegations of Paragraph 329.

330. Alleviate denies the allegations of Paragraph 330.

331. Alleviate denies the allegations of Paragraph 321.

332. Alleviate denies the allegations of Paragraph 332.

333. Alleviate denies the allegations of Paragraph 323.

334. Alleviate denies the allegations of Paragraph 334.

335. Alleviate denies the allegations of Paragraph 335.

336. Alleviate denies the allegations of Paragraph 336.

337. Alleviate denies the allegations of Paragraph 337.

338. Alleviate denies the allegations of Paragraph 338.

1 339. Paragraph 339 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 339.

4 340. Paragraph 340 alleges legal conclusions to which no response is
5 required. To the extent a response is deemed necessary, Alleviate denies the
6 allegations of Paragraph 340.

7 341. Paragraph 341 alleges legal conclusions to which no response is
8 required. To the extent a response is deemed necessary, Alleviate denies the
9 allegations of Paragraph 341.

10 342. Alleviate denies the allegations of Paragraph 342.

11 343. Alleviate denies the allegations of Paragraph 343.

12 344. Paragraph 344 alleges legal conclusions to which no response is
13 required. To the extent a response is deemed necessary, Alleviate denies the
14 allegations of Paragraph 344.

15 345. Paragraph 345 alleges legal conclusions to which no response is
16 required. To the extent a response is deemed necessary, Alleviate denies the
17 allegations of Paragraph 345.

18 346. Paragraph 346 alleges legal conclusions to which no response is
19 required. To the extent a response is deemed necessary, Alleviate denies the
20 allegations of Paragraph 346.

21 347. Paragraph 347 alleges legal conclusions to which no response is
22 required. To the extent a response is deemed necessary, Alleviate denies the
23 allegations of Paragraph 347.

24 348. Paragraph 348 alleges legal conclusions to which no response is
25 required. To the extent a response is deemed necessary, Alleviate denies the
26 allegations of Paragraph 348.

27 349. Alleviate denies the allegations of Paragraph 349.

28

1 350. Paragraph 350 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 350.

4 351. Paragraph 351 alleges legal conclusions to which no response is
5 required. To the extent a response is deemed necessary, Alleviate denies the
6 allegations of Paragraph 351.

7 352. Paragraph 352 alleges legal conclusions to which no response is
8 required. To the extent a response is deemed necessary, Alleviate denies the
9 allegations of Paragraph 352.

10 353. Paragraph 353 alleges legal conclusions to which no response is
11 required. To the extent a response is deemed necessary, Alleviate denies the
12 allegations of Paragraph 353.

13 354. Alleviate denies the allegations of Paragraph 354.

14 355. Alleviate denies the allegations of Paragraph 355.

15 356. Paragraph 356 alleges legal conclusions to which no response is
16 required. To the extent a response is deemed necessary, Alleviate denies the
17 allegations of Paragraph 356.

18 357. Paragraph 357 alleges legal conclusions to which no response is
19 required. To the extent a response is deemed necessary, Alleviate denies the
20 allegations of Paragraph 357.

21 358. Paragraph 358 alleges legal conclusions to which no response is
22 required. To the extent a response is deemed necessary, Alleviate denies the
23 allegations of Paragraph 358.

24 359. Paragraph 359 alleges legal conclusions to which no response is
25 required. To the extent a response is deemed necessary, Alleviate denies the
26 allegations of Paragraph 359.

27
28

1 360. Paragraph 360 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 360.

4 361. Alleviate denies the allegations of Paragraph 361.

5 362. Paragraph 362 alleges legal conclusions to which no response is
6 required. To the extent a response is deemed necessary, Alleviate denies the
7 allegations of Paragraph 362.

8 363. Alleviate denies the allegations of Paragraph 363.

9 364. Alleviate denies the allegations of Paragraph 364.

10 365. Paragraph 365 alleges legal conclusions to which no response is
11 required. To the extent a response is deemed necessary, Alleviate denies the
12 allegations of Paragraph 365.

13 366. Alleviate denies the allegations of Paragraph 366.

14 367. Alleviate denies the allegations of Paragraph 367.

15 368. Alleviate denies the allegations of Paragraph 368.

16 369. Paragraph 369 alleges legal conclusions to which no response is
17 required. To the extent a response is deemed necessary, Alleviate denies the
18 allegations of Paragraph 369.

19 370. Alleviate denies the allegations of Paragraph 370.

20 371. Alleviate denies the allegations of Paragraph 371.

21 372. Paragraph 372 alleges legal conclusions to which no response is
22 required. To the extent a response is deemed necessary, Alleviate denies the
23 allegations of Paragraph 372.

24 373. Paragraph 373 alleges legal conclusions to which no response is
25 required. To the extent a response is deemed necessary, Alleviate denies the
26 allegations of Paragraph 373.

1 374. Paragraph 374 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 374.

4 375. Paragraph 375 alleges legal conclusions to which no response is
5 required. To the extent a response is deemed necessary, Alleviate denies the
6 allegations of Paragraph 375.

7 376. Paragraph 376 alleges legal conclusions to which no response is
8 required. To the extent a response is deemed necessary, Alleviate denies the
9 allegations of Paragraph 376.

10 377. Paragraph 377 alleges legal conclusions to which no response is
11 required. To the extent a response is deemed necessary, Alleviate denies the
12 allegations of Paragraph 377.

13 378. Paragraph 378 alleges legal conclusions to which no response is
14 required. To the extent a response is deemed necessary, Alleviate denies the
15 allegations of Paragraph 378.

16 379. Paragraph 379 alleges legal conclusions to which no response is
17 required. To the extent a response is deemed necessary, Alleviate denies the
18 allegations of Paragraph 379.

19 380. Paragraph 380 alleges legal conclusions to which no response is
20 required. To the extent a response is deemed necessary, Alleviate denies the
21 allegations of Paragraph 380.

22 381. Paragraph 381 alleges legal conclusions to which no response is
23 required. To the extent a response is deemed necessary, Alleviate denies the
24 allegations of Paragraph 381.

25 382. Paragraph 382 alleges legal conclusions to which no response is
26 required. To the extent a response is deemed necessary, Alleviate denies the
27 allegations of Paragraph 382.

28

1 383. Paragraph 383 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 383.

4 384. Paragraph 384 alleges legal conclusions to which no response is
5 required. To the extent a response is deemed necessary, Alleviate denies the
6 allegations of Paragraph 384.

7 385. Paragraph 385 alleges legal conclusions to which no response is
8 required. To the extent a response is deemed necessary, Alleviate denies the
9 allegations of Paragraph 385.

10 386. Paragraph 386 alleges legal conclusions to which no response is
11 required. To the extent a response is deemed necessary, Alleviate denies the
12 allegations of Paragraph 386.

13 387. Paragraph 387 alleges legal conclusions to which no response is
14 required. To the extent a response is deemed necessary, Alleviate denies the
15 allegations of Paragraph 387.

16 388. Paragraph 388 alleges legal conclusions to which no response is
17 required. To the extent a response is deemed necessary, Alleviate denies the
18 allegations of Paragraph 388.

19 389. Paragraph 389 alleges legal conclusions to which no response is
20 required. To the extent a response is deemed necessary, Alleviate denies the
21 allegations of Paragraph 389.

22 390. Paragraph 390 alleges legal conclusions to which no response is
23 required. To the extent a response is deemed necessary, Alleviate denies the
24 allegations of Paragraph 390.

25 391. Paragraph 391 alleges legal conclusions to which no response is
26 required. To the extent a response is deemed necessary, Alleviate denies the
27 allegations of Paragraph 391.

28

IV. RELIEF**Federal Claims – TCPA 47 U.S.C. § 227 & 47 C.F.R. § 64.1200****Count 1**

392. Paragraph 392 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 392.

Count 2

393. Paragraph 393 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 393.

Count 3

394. Paragraph 394 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 394.

395. Paragraph 395 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 395.

396. Paragraph 396 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 396.

Count 4

397. Paragraph 397 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate denies the allegations of Paragraph 397.

Count 5

398. Paragraph 398 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate states that 47 C.F.R.

1 § 64.1200(b) is a federal statute that speaks for itself, and otherwise denies the
2 allegations in Paragraph 398.

3 399. Paragraph 399 alleges legal conclusions to which no response is
4 required. To the extent a response is deemed necessary, Alleviate states that 47 C.F.R.
5 § 64.1200(b) is a federal statute that speaks for itself, and otherwise denies the
6 allegations in Paragraph 399.

7 400. Paragraph 400 alleges legal conclusions to which no response is
8 required. To the extent a response is deemed necessary, Alleviate states that 47 C.F.R.
9 § 64.1200(b) is a federal statute that speaks for itself, and otherwise denies the
10 allegations in Paragraph 400.

11 401. Paragraph 401 alleges legal conclusions to which no response is
12 required. To the extent a response is deemed necessary, Alleviate denies the
13 allegations of Paragraph 401.

14 **Count 6**

15 402. Paragraph 402 alleges legal conclusions to which no response is
16 required. To the extent a response is deemed necessary, Alleviate states that 47 C.F.R.
17 § 64.1200(d) is a federal statute that speaks for itself, and otherwise denies the
18 allegations in Paragraph 402.

19 403. Paragraph 403 alleges legal conclusions to which no response is
20 required. To the extent a response is deemed necessary, Alleviate denies the
21 allegations of Paragraph 403.

22 **Washington State Claims**

23 **RWC 80.36.390 – Prior to July 23, 2023**

24 **Count 7**

25 404. Paragraph 404 alleges legal conclusions to which no response is
26 required. To the extent a response is deemed necessary, Alleviate states that RCW
27
28

1 80.36.390(2) is a federal statute that speaks for itself, and otherwise denies the
2 allegations in Paragraph 404.

3 405. Paragraph 405 alleges legal conclusions to which no response is
4 required. To the extent a response is deemed necessary, Alleviate denies the
5 allegations of Paragraph 405.

6 **RCW 80.36.390 – On or after July 23, 2023**

7 **Count 8**

8 406. Paragraph 406 alleges legal conclusions to which no response is
9 required. To the extent a response is deemed necessary, Alleviate states that RCW
10 80.36.390(3) is a federal statute that speaks for itself, and otherwise denies the
11 allegations in Paragraph 406.

12 407. Paragraph 407 alleges legal conclusions to which no response is
13 required. To the extent a response is deemed necessary, Alleviate denies the
14 allegations of Paragraph 407.

15 **Count 9**

16 408. Paragraph 408 alleges legal conclusions to which no response is
17 required. To the extent a response is deemed necessary, Alleviate states that RCW
18 80.36.390(9) is a federal statute that speaks for itself, and otherwise denies the
19 allegations in Paragraph 408.

20 409. Paragraph 409 alleges legal conclusions to which no response is
21 required. To the extent a response is deemed necessary, Alleviate denies the
22 allegations of Paragraph 409.

23 **Count 10**

24 410. Paragraph 410 alleges legal conclusions to which no response is
25 required. To the extent a response is deemed necessary, Alleviate states that RCW
26 80.36.390(10) is a federal statute that speaks for itself, and otherwise denies the
27 allegations in Paragraph 410.

417. Paragraph 417 alleges legal conclusions to which no response is required. To the extent a response is deemed necessary, Alleviate states that CEMA is a federal statute that speaks for itself, and otherwise denies the allegations in Paragraph 417.

Injunctive Relief

1 424. Paragraph 424 alleges legal conclusions to which no response is
2 required. To the extent a response is deemed necessary, Alleviate denies the
3 allegations of Paragraph 424.

4 **All Possible Statutory Damages**

5 425. Paragraph 425 alleges legal conclusions to which no response is
6 required. To the extent a response is deemed necessary, Alleviate denies the
7 allegations of Paragraph 425.

8 **PRAYER FOR RELIEF**

9 Alleviate denies liability and denies all allegations of the Relief Sought and
10 its subsections. Alleviate hereby gives notice that it may rely on other defenses if
11 and when such defenses become known during the course of litigation, and hereby
12 reserves the right to amend its answer to assert any other defenses as they become
13 known or available.

14 **AFFIRMATIVE AND OTHER DEFENSES**

15 Each of the defenses set forth herein is stated as a separate and distinct
16 defense, in the alternative to, and without waiving, any of the other defenses which
17 are herein or which may hereafter be pleaded. Alleviate reserves the right to raise
18 such additional affirmative and other defenses as may be established during
19 discovery and by the evidence in this case. Alleviate asserts the following specific
20 defenses:

21 **FIRST DEFENSE**

22 Plaintiff's First Amended Complaint fails to state a claim upon which relief
23 may be granted.

24 **SECOND DEFENSE**

25 Plaintiff's claims against Alleviate are barred, in whole or in part, because the
26 alleged injuries were caused by acts or omissions of Plaintiff and/or third parties
27 and/or by events outside the control of any of the parties and/or a superseding
28

1 intervening cause and not by Alleviate.

2 **THIRD DEFENSE**

3 Alleviate did not violate the TCPA directly, and Plaintiff fails to allege a
4 claim under any theory of vicarious liability.

5 **FOURTH DEFENSE**

6 Plaintiff lacks Article III standing to bring this action because he did not suffer
7 an injury-in-fact as a result of Alleviate's alleged conduct.

8 **FIFTH DEFENSE**

9 The imposition of statutory damages under the TCPA and CEMA against
10 Alleviate would violate the due process provisions of the U.S. Constitution and/or
11 the Constitution of the State of Washington.

12 **SIXTH DEFENSE**

13 Plaintiff's claims are barred under the doctrines of laches and/or unclean
14 hands. Plaintiff is a repeat litigator who is very familiar with the TCPA. Rather than
15 request calls stop he intentionally waited to bring this lawsuit after a significant
16 amount of telephone calls had occurred, rather than informing Alleviate at the outset
17 that such conduct was occurring. Further as alleged in the counterclaim, he
18 intentionally set up the lawsuit.

19 **SEVENTH DEFENSE**

20 Plaintiff's claims are barred to the extent they are not the "called party" within
21 the meaning of the TCPA.

22 **EIGHTH DEFENSE**

23 Plaintiff's claims are barred, or damages reduced, to the extent that any harm
24 or injuries were the result of, in whole or in part, the negligent or intentional acts or
25 omissions of third parties.

26 **NINTH DEFENSE**

27 Alleviate is informed and believes that Plaintiff's claims are barred in whole
28

1 or in part as a result of their failure to mitigate their alleged damages, if any, and
2 any recovery should be reduced in proportion to their failure to mitigate such
3 damages.

4 **TENTH DEFENSE**

5 Alleviate did not willfully or knowingly contact Plaintiff on the phone
6 numbers at issue without prior express consent. To the extent that there was any
7 violation of the TCPA, which Alleviate denies, Alleviate shall be liable for no more
8 than a \$500.00 penalty, as Alleviate denies that it willfully and knowingly violated
9 the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C).

10 **ELEVENTH DEFENSE**

11 To the extent there was any violation of the TCPA, which Alleviate denies,
12 Alleviate shall be liable for no more than a \$500.00 penalty, as Plaintiff has not
13 sustained any actual monetary loss pursuant to 47 U.S.C. § 227(b)(3)(B).

14 **TWELFTH DEFENSE**

15 Alleviate's actions were proper and legal, and at all times it acted with good
16 faith and without malice. Thus, to the extent there was any violation of the TCPA,
17 which Alleviate denies, such violation(s) were not knowing and willful.

18 **THIRTEENTH DEFENSE**

19 To the extent there was any violation of the TCPA, which Alleviate denies,
20 Alleviate's actions were not knowing and/or willful because any violation was
21 unintentional and the result of a *bona fide* error despite the maintenance of procedures
22 reasonably adapted to avoid such violations.

23 **FOURTEENTH DEFENSE**

24 Alleviate is informed and believes that Plaintiff has not sustained any actual
25 injury as a result of the alleged violations of the TCPA. Plaintiff must sustain an
26 injury in fact for each individual call for which Plaintiff claims a violation.
27
28

FIFTEENTH DEFENSE

By reason of Plaintiff's inaction with respect to and/or ratification of the calls he alleges were made by Alleviate, Plaintiff is estopped from recovery herein and Plaintiff's claims against Alleviate are barred by the doctrines of waiver and/or estoppel (including res judicata, collateral estoppel, and judicial estoppel).

SIXTEENTH DEFENSE

Alleviate's compliance with the statutes, rules, and regulations which govern the subject matter of this lawsuit precludes its liability to Plaintiff.

SEVENTEENTH DEFENSE

Application of the TCPA, as interpreted by the FCC, violates the First Amendment of the U.S. Constitution because such application relies upon content-based restrictions of protected speech. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015) ("Government regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed.").

EIGHTEENTH DEFENSE

The TCPA is unconstitutionally vague because the restrictions imposed by the TCPA do not give a person of ordinary intelligence adequate notice of the conduct that is prohibited. *See Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

NINETEENTH DEFENSE

Any award of punitive or statutory damages against Defendant would be unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, and the Excessive Fines Clause of the Eighth Amendment to the U.S. Constitution.

TWENTIETH DEFENSE

The amount of damages prescribed by the TCPA statute are so severe and oppressive as to be wholly disproportionate to the offense and obviously

unreasonable allowing for the Court to reduce the damage award, if any. Thus, as applied in this case any award of damages should be reduced to comport with due process. *See Golan v. Veritas Entm't, LLC*, No. 4:14CV00069 ERW, 2017 U.S. Dist. LEXIS 144501, at *10 (E.D. Mo. Sept. 7, 2017) (“[t]he TCPA’s statutory damages clause is constitutional, but a specific damages award may be unconstitutional if it is ‘so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.’” (quoting *Capitol Records, Inc. v. Thomas-Rasset*, 692 F.3d 899, 907 (8th Cir. 2012))).

TWENTY-FIRST DEFENSE

The allegations of the First Amended Complaint, and the purported cause of action alleged in the First Amended Complaint, are not pleaded with sufficient particularity, are uncertain, vague, ambiguous, and unintelligible, and fail to meet the applicable pleading requirements.

TWENTY-SECOND DEFENSE

Plaintiff’s claims are barred, in whole or in part, because Plaintiff’s requested relief is too speculative and/or remote and/or impossible to prove and/or allocate.

TWENTY-THIRD DEFENSE

Alleviate acted in good faith in any and all interactions with Plaintiff and did not directly or indirectly perform any acts whatsoever which would constitute a violation of any rights of Plaintiff or any duty, if any, owed to Plaintiff.

TWENTY-FOURTH DEFENSE

Plaintiff’s claims fail or otherwise are barred, in whole or in part, or are limited because to the extent the subject telephone calls occurred, the calls were made with the prior express consent of Plaintiff or someone acting on Plaintiff’s behalf.

TWENTY-FIFTH DEFENSE

Alleviate reserves the right to assert arbitration.

TWENTY-SIXTH DEFENSE

Plaintiff's claims fail or otherwise are barred, in whole or in part, because Alleviate has instituted procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of that person or entity.

TWENTY-SEVENTH DEFENSE

Alleviate is without sufficient knowledge or information to form a belief as to whether it may have additional, but yet unstated, affirmative defenses available to it, and accordingly, Alleviate reserves the right to assert additional defenses in the event discovery indicates that the same would be appropriate.

PRAYER FOR RELIEF

WHEREFORE, Alleviate prays for relief and judgment, as follows:

- A. Dismissing the First Amended Complaint with prejudice;
- B. Entering judgment against Plaintiff and in favor of Alleviate with respect to all Counts in the First Amended Complaint;
- C. Awarding Alleviate its reasonable costs and expenses incurred in this action; and
- D. Awarding such other and further relief as the Court may deem just and proper.

COUNTERCLAIM

Alleviate Tax LLC v. Nathan Barton

I. STATEMENT OF FACTS.

1. Since 2021, Plaintiff is a serial litigant who has filed twenty-three lawsuits in the United States District Court for the Western District of Washington, asserting claims under the Telephone Consumer Protection Act, 42 U.S.C. § 227 ("TCPA").

2. The lawsuits filed by Plaintiff allege that various companies called him on many different telephone numbers.

1 3. Plaintiff has also filed or served through “pocket service” many lawsuits in
2 Washington state courts as well asserting TCPA violations.

3 4. Given the significant number of TCPA lawsuits filed by the Plaintiff against
4 various defendants, it is perplexing how the Plaintiff still receives numerous calls,
5 especially since his number has been flagged by several companies as that of a serial
6 litigator in efforts to prevent their clients from calling him.

7 5. Based upon information and belief, Plaintiff continues to collect new
8 telephone numbers due to the previous number being blocked from receiving
9 telemarketing calls. He does this specifically in the hopes of receiving telemarketing
10 calls so he can bring TCPA lawsuits and obtain monetary recoveries.

11 6. Based upon information and belief, Plaintiff opens these phone numbers as
12 business phones which he uses to create, build and manufacture TCPA lawsuits.

13 7. Plaintiff has filled out three “opt-in” requests providing prior express written
14 consent to third party vendors to make telemarketing calls to his three cellular phones
15 that end in -1019, -2139, and -5749.

16 8. The “opt-in” requests were made under the names of “fuck yaa,” “N bart,”
17 and “Nathen B.”

18 9. The “opt-in” requests provide express written consent to receive calls from
19 Alleviate Tax.

20 10. Plaintiff alleges in his lawsuit against Alleviate that these three numbers
21 were called in violation of the TCPA and Washington state law despite those calls
22 being invited.

23 11. The “opt-in” request for Plaintiff’s number ending in -1019 was provided
24 on June 21, 2023, through the website <https://taxreliefasap.com/>.

25 12. The “opt-in” request for Plaintiff’s number ending in -2139 was provided
26 on June 29, 2023, through the website <https://taxreliefasap.com/>.

1 13. The “opt-in” request for Plaintiff’s number ending in -5749 was provided
2 on July 5, 2023, through the website <https://taxreliefasap.com/>.

3 14. Based upon information and belief, Plaintiff received calls from third
4 party vendors that relied upon Plaintiff’s prior express written consent.

5 15. Relying upon Plaintiff’s prior express written consent, Plaintiff’s call was
6 transferred to Alleviate on one occasion on July 13, 2023. This call was made to
7 Plaintiff’s number ending in -1019 and lasted for thirty-five minutes. During this
8 call, Plaintiff did not request calls to stop and expressed interest in Alleviate Tax’s
9 product, thus wasting the time of Alleviate Tax’s agent and costing it money.

10 16. Additionally, Plaintiff claims that he sent a do not call request to an email
11 address which is owned by Alleviate Tax, support@alleviatetax.com, but this email
12 address is not owned or operated by Alleviate.

13 COUNTERCLAIM COUNT I

14 FRAUD

15 17. Alleviate incorporates the foregoing paragraphs as if set forth at length
16 herein.

17 18. Plaintiff knowingly and intentionally made false representations by
18 opting into telemarketing communications with fake or partial information in order
19 to induce calls to his cellular telephones.

20 19. Plaintiff concealed his true intent to invite and then litigate against these
21 calls.

22 20. Alleviate and, upon information and belief, third party vendors
23 reasonably relied on Plaintiff’s express consent, which directly led to Alleviate
24 incurring financial losses due to wasted time contacting him, reputational damage,
25 and the cost of defending litigation instigated by Plaintiff under false pretenses.

26 **WHEREFORE**, Defendant, Alleviate Tax LLC, respectfully demands that
27 the Court enter judgment in its favor and against Plaintiff, together with costs,
28

1 attorney's fees, disbursements, and any other relief deemed appropriate by this
2 Honorable Court.

3 **JURY TRIAL DEMAND**

4 A jury trial is demanded on all issues triable by a jury.

5 DATED this 4th day of April, 2024.

6 /s/ Kristin Nealey Meier

7 Kristin Nealey Meier, WSBA #33562
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11 By: /s/Tori L. Guidry

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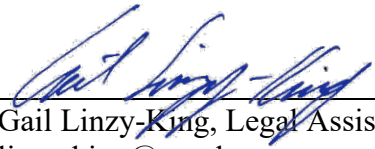
15 tori@troutmanfirm.com

16 *Attorneys for Defendant Alleviate Tax LLC*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 25th day of April, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Nathen Barton
4618 NW 11th Cir.
Camas, WA 98607
BlueWind33@protonmail.com
T: 469-347-2139
Pro Se Plaintiff



Gail Linzy-King, Legal Assistant
linzy-king@ryanlaw.com